

NOTICE OF PROPOSED REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections Division 3, Department of Corrections

NOTICE IS HEREBY GIVEN that the Director of the California Department of Corrections (CDC), pursuant to rulemaking authority granted by Penal Code (PC) Section 5058, in order to implement, interpret, and make specific PC Section 5054, proposes to amend Sections 3040, 3041, 3041.1, 3042.2 and 3043.5 of the California Code of Regulations (CCR), Title 15, Division 3 concerning monetarily compensated inmate work (inmate pay).

PUBLIC HEARING:

Date and Time: December 30, 2003, 1:00 PM to 3:00 PM
Place: Resources Agency Auditorium
1416 Ninth Street
Sacramento, CA 95814
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close December 30, 2003 at 5:00 p.m. Any person may submit public comments in writing (by mail, fax or e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDC Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 322-3842; or by e-mail at RPMB@executive.corr.ca.gov before the close of the comment period. The hearing site identified above is accessible to mobility impaired individuals.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

**Rick Grenz, Chief,
Regulation and Policy Management Branch
Department of Corrections
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 322-9702**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**Ellery Kuhn, Regulations Specialist
Regulation and Policy Management Branch
Telephone: (916) 322-9702**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Fred Lembach, Correctional Lieutenant
Operational Review Unit, Institutions Division
Telephone: (916) 327-5034**

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate that requires reimbursement pursuant to Government Code Sections 17500 through 17630.

FISCAL IMPACT STATEMENT:

- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business, because they are not affected by this change in the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION, OR EXPANSION:

The Department has determined that the proposed regulation will have no effect on the creation of new or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains these items and all information on which the proposal is based (i.e., rulemaking file), will be made available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and the Notice of Proposed Action will also be made available on the Department's website at <http://www.cdc.state.ca.us>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the final statement of reasons may be obtained from the Department's contact person, or viewed on the Regulation and Policy pages of the Department's website at <http://www.corr.ca.gov/RegulationsPolicies/>.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

PC Section 5054 vests the Director with the supervision, management, and control of the prisons; and the responsibility for the care, custody, treatment, training, discipline, and employment of inmates.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

The Department proposes amending various existing sections of the CCR which pertain to and govern monetarily compensated inmate work, commonly referred to as "inmate pay."

Changes in Section 3040 are made in order to more clearly frame the issue of monetarily compensated inmate work. Inmate compensation is an option available to the Director. However, the determination of which assignments will actually be paid and the rate of pay for any particular assignment will be made at the individual institution level. Each institution shall administer paid positions consistent with allotted budgets with the assistance of Department and institutional-level pay committees, which will provide added oversight for all inmate pay matters. That the criteria used in determining which positions are paid or changed to non pay status are funding, job performance, seniority, and conduct is newly stated, as is the fact that a paid position, rate of pay and/or eligibility to earn pay is a privilege. Certain inmate assignments are specified as non pay, allowing for explicitly identified exceptions. Other changes are made so as to provide defensible regulatory rationale and thereby a means of resolving disputes regarding a number of matters relevant to rotation in assignment, temporary suspension of position or pay, and the primacy of operational need.

Amendments in Section 3041 address certain performance and documentation matters, such as timekeeping and pay only for authorized absences.

Substantive and editorial revisions in Section 3041.1 add explanatory emphasis to such matters as institutional criteria for paid positions, the use of applications and/or resumes in the selection of skilled workers and the ranking of assignments on the basis of technical skill. The Department will use the skill level designations specified by the US Department of labor in order to maintain system wide continuity. The skill level provisions will be directly linked to the system wide standardized pay schedule set forth in Section 3041.2. This schedule is intended for use as a "matrix" of compensation parameters and skill level to provide consistency in determining the relative worth of any particular inmate job assignment throughout the institutions.

Extraordinary pay rates, pay increases, job evaluations, and adjustments in the designation of paid Inmate Advisory Council positions are addressed in other revisions being made in Subsections 3041.2 and 3043.5.